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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,131	11/05/1999	HIROSHI KAWAKAMI	3815/90	6371

22913 7590 04/13/2007

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EXAMINER

HOM, SHICK C

ART UNIT

PAPER NUMBER

2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/423,131	<b>Applicant(s)</b> KAWAKAMI ET AL.	
	<b>Examiner</b> Shick C. Hom	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-8, 10 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-8, 10 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/26/06</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 1/2/07 have been fully considered but they are not persuasive. In page 8 of the remarks, applicant argued that the Shimokasa patent does not disclose or suggest the use of a traffic monitoring period that is adjustable based on an interval inherent in the data is not persuasive because Shimokasa in col. 6 lines 29-45 recite the traffic measuring section counting the number of cells received and send on the line for a specified period of time and col. 8 lines 1-17 recite because of the difference between voice and data transmissions, a time setting section is provided for setting a time zone for the congested state detecting function clearly anticipate a traffic monitoring period that is adjustable based on an interval inherent in the data as in claims 3, 4, and 10.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 4 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Shimokasa (5,903,547).

Shimokasa discloses a traffic control unit configured to carry carrying out traffic control of data taking place in a burst mode at intervals proper to the data (Fig. 1 shows the traffic control unit 1 and the PBX and voice processing sections 10, 13 clearly anticipate control of data whereby the data being in burst mode), the interval being inherent in the data, said traffic control unit comprising:

receiving means for receiving the data; traffic control means for carrying out the traffic control for the data received by said receiving means such that a cumulative transmission volume in a traffic monitoring period does not exceed an allowed transmission volume (col. 7 lines 11-18 recite means for keeping the traffic volume at a constant value or greater whereby if the line enters a congested state, the volume of traffic flowing into the line is reduced or cells discarded),

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the traffic monitoring period being adjustably determined based on said interval inherent in the data, the allowed transmission volume being determined based on a traffic rate of the data; and transmission means for transmitting the data controlled by said traffic control means (col. 6 lines 29-45 recite the traffic measuring section counting the number of cells received and send on the line for a specified period of time and col. 8 lines 1-17 recite because of the difference between voice and data transmissions, a time setting section is provided for setting a time zone for the congested state detecting function clearly anticipate a traffic monitoring period that is adjustable based on an interval inherent in the data).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3, 5-8, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimokasa (5,903,547) in view of Pasternak et al. (6,157,614).

For claims 3, 5-8, and 20, Shimokasa discloses the device and method described in paragraph 4 of this office action. Shimokasa discloses all the subject matter of the claimed invention with the exception of the radio base station comprising the traffic control unit as in claims 3, 8, 20; and traffic control and monitoring being according to peak traffic and sustainable traffic as in claims 5-7.

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Pasternak et al. from the same or similar fields of endeavor teach that it is known to provide the radio base station comprising the traffic control unit (see col. 8 lines 34-50 which recite wireless base sector controllers performing all ATM traffic control and scheduling of transmission in the sector); and traffic control and monitoring being according to peak traffic and sustainable traffic (see col. 4 lines 18-34 which recite the traffic description parameters being based on peak cell rate and sustained cell rate). Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the radio base station comprising the traffic control unit and traffic control and monitoring being according to peak traffic and sustainable traffic as taught by Pasternak et al. in the communications device of Shimokasa. The radio base station comprising the traffic control unit and traffic control and monitoring being according to peak traffic and sustainable traffic can be implemented by connecting the base station of Pasternak et al. to the traffic control unit of Shimokasa and using traffic control and monitoring according to peak traffic and sustainable traffic. The motivation for providing the radio base station and traffic control and monitoring being according to peak traffic and sustainable traffic as taught by Pasternak et al. in

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the communication device of Shimokasa being that it provides the desirable added feature of wireless communication to the control device of Shimokasa.

### **Conclusion**

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Mon-Fri.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sh SH

*Seema S. Rao*  
4/11/07  
SEEMA S. RAO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

**10 / 12**

WHEN  $X_{PCR} = 2$  AND  $X_{SCR} = 5$

CPCR = 1	1	2	1	2	x	1	x
NSCR = 1	2	3	x	4	5	x	x

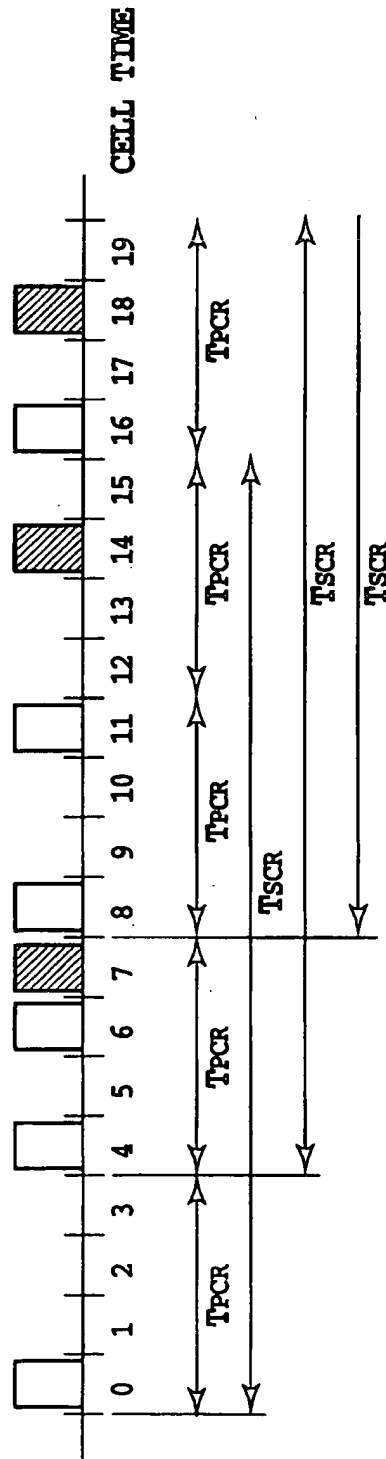
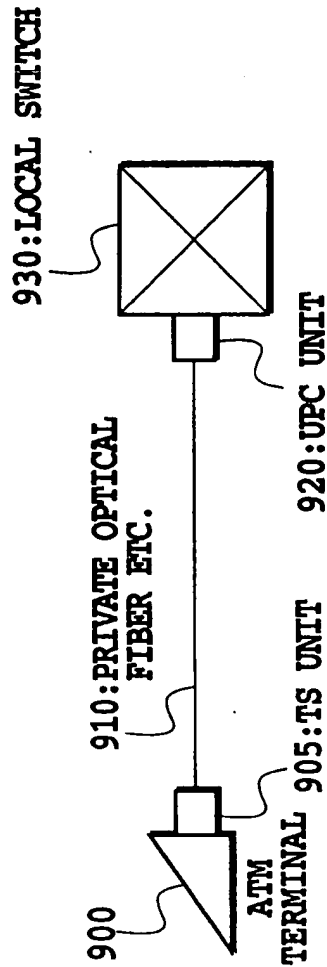


FIG. 10



**FIG.11**  
(Prior Art)

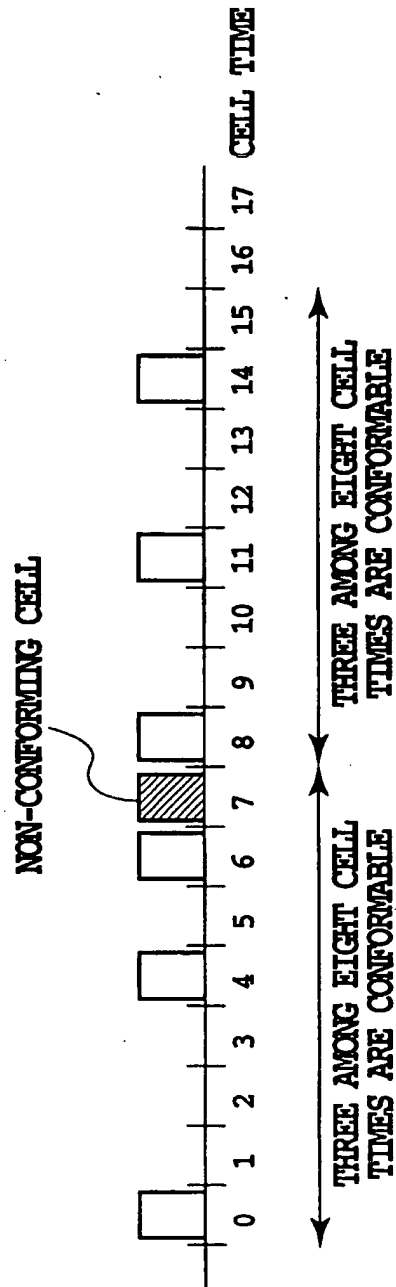


FIG.12  
(Prior Art)